IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 819 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

D.R. DAVE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 819 of 1993

Mr.D.C.Raval for MR M.R. ANAND for Petitioner No. 1

Mr. N.D.Gohi, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 13/09/2004

ORAL JUDGEMENT

1. In this petition, the petitioner has challenged the action of the respondents in seeking to reduce the

petitioner's salary as being illegal and unlawful.

2. Short facts leading to the present petition are that the petitioner is working as a Gujarati Typist with the respondents since 18-6-1983. On 13-8-1991, the petitioner was transferred from Ahmedabad District to Banaskantha at his request on mutual request transfer. In the order of transfer, the petitioner had agreed to forego his seniority and accepted bottom seniority at the place of his transfer i.e. District Banaskantha. He had also agreed not to avail of joining time or transfer allowance, since the transfer was at his request and not in public interest. It is the case of the petitioner that the Government by Resolution dated 5-7-1991 decided to grant stagnation increments to the employees who have completed 9/18/27 years without any promotion to the higher grade. It is also the case of the petitioner that since the petitioner had completed 9 years of service on 17th June, 1992, the petitioner's pay was fixed in the next higher payscale of Rs.1640-2900 with effect from 17th June, 1992 by an order dated 20th June, 1992. The petitioner has further averred that the respondents were seeking to withdraw the said benefits of higher payscale given to the petitioner on the ground that he had lost his seniority upon transfer to Banaskantha District. The petitioner, therefore, approached this Court by filing the present Special Civil Application and by interim order in terms of paragraph 9, the pay of the petitioner has been protected by this Court during the pendency of this petition.

3. The learned Counsel Shri Raval, appearing for the petitioner submits that the action of the respondents in seeking to withdraw the higher payscale granted to the petitioner is illegal and unlawful inasmuch as the petitioner though would have lost his seniority on his transfer to Banaskantha District, for the purpose of promotion and other benefits, the number of years of service put in by the petitioner cannot be wiped out for the purpose of granting higher payscale as per the Government Policy dated 5th July, 1991 since higher payscale is to be granted for stagnation for a certain number of years and has nothing to do with relative seniority of the employees.

4. The issue involved in the present petition is no longer possible for a debate. In the decision of the Honourable Supreme Court in UNION OF INDIA AND ANOTHER V. V.N.BHATT reported in (2003) 8 Supreme Court Cases 714, the Honourable Supreme Court was pleased to hold that even on voluntary transfer where the employee would lose

his seniority, he would not lose other benefits and cannot be deprived of his experience and eligibility for promotion and for the purpose of time bound promotion scheme, the petitioner would retain his experience of the previous service. Similar view was also taken by the Honourable the Supreme Court in the decisions of SCIENTIFIC ADVISOR TO RAKSHA MANTRI AND ANOTHER v. V.M.JOSEPH reported in (1998) 5 Supreme Court Cases 305 and RENU MULLICK (SMT) v. UNION OF INDIA AND ANOTHER reported in (1994) 1 Supreme Court Cases 373, Learned Counsel for the petitioner also relies on a decision of the learned Single Judge of this High Court dated 10th September, 1999 passed in Special Civil Application no.5403 of 1996.

5. On the basis of the above judicial decisions and the ratio laid down therein, I have no hesitation in coming to the conclusion that the petitioner was entitled to receive the higher payscale pursuant to the Government Resolution dated 5th July, 1991 despite his transfer at his request to Banaskantha District as the petitioner is entitled to retain his past experience to reckon requisite nine years of service for the purpose of grant of higher payscale upon stagnation for the above period.

6. In view of the foregoing discussion, I find that the respondents have correctly placed the petitioner in the higher payscale vide order dated 20th June, 1992 Annexure "C" and there is no scope to withdraw the same.

7. In the result, the petition succeeds. The respondents are permanently prevented from withdrawing the higher payscale granted to the petitioner pursuant to order dated 20th June, 1992. Rule is made absolute with no orders as to costs.

(Akil Kureshi,J.)

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